IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 400 OF 2003
IN
SUMMARY SUIT NO. 530 OF 2003

J.R. Manial .. Plaintiff

versus

Devidutta Arunkumar & ors. .. Defendants

...

Mr.H.V. Chande for the plaintiff.

None for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 25th January 2005.

P.C.:

1. Heard the learned counsel for the plaintiff. None present for the defendant.

2. The plaintiff has filed this suit for recovery of a money due of a bill of exchange drawn by the defendant no.1 and accepted by the defendant no.3. The defendant nos.2 and 4 are proprietors of defendant nos.1 and 3 respectively. The defendant no.2 has filed affidavit in reply in which he has admitted having received the loan. He however has taken a defence that the loan was taken through a

broker and the entire loan has been repaid to the broker. No proof has been produced regarding the repayment to the broker and in any event repayment to the broker would not discharge him as it is not shown that broker was authorised by the plaintiff to collect the money. The dishonoured cheques issued by the defendants are also annexed to the plaint. In the circumstances, the defendant has no real defence and the plaintiff is entitled to the Summons for Judgement being made absolute. However, merely as an act of mercy, I am inclined to grant conditional leave to the defendants.

3. The defendants are granted conditional leave to defend the suit subject to their depositing in the Court a sum of Rs.91,000/- within a period of four weeks. On failure of the defendants to deposit, the plaintiff shall be entitled to apply. On deposit of the money by the defendants, plaintiff shall be entitled to withdraw the same by furnishing a bond to this Court to repay the said money in the Court in the event the suit fails or if so ordered by the Court. On deposit of the money, suit shall stand transferred to the list of commercial causes. After deposit of the money, defendant shall file written statement within a period of one month.

D.G. KARNIK, J